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SENATE BILL 283

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

L. SKIP VERNON

AN ACT

RELATING TO FAMILY LAW; PROVIDING ADDITIONAL GUIDELINES FOR
JOINT CUSTODY OF A CHILD; AMENDING A SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 40-4-9.1 NMSA 1978 (being Laws 1986,
Chapter 41, Section 1) is amended to read:

"40-4-9.1. JOINT CUSTODY--STANDARDS FOR DETERMINATION--
PARENTING PLAN. --

A. There shall be a presumption that joint custody
is in the best ~~[interest]~~ interests of a child in an initial
custody determination. An award of joint custody does not
imply an equal division of financial responsibility for the
child. Joint custody shall not be awarded as a substitute for
an existing custody arrangement unless there has been a
substantial and material change in circumstances since the

1 entry of the prior custody order or decree, which change
2 affects the welfare of the child such that joint custody is
3 presently in the best interests of the child. With respect to
4 any proceeding in which it is proposed that joint custody be
5 terminated, the court shall not terminate joint custody unless
6 there has been a substantial and material change in
7 circumstances affecting the welfare of the child, since entry
8 of the joint custody order, such that joint custody is no
9 longer in the best interests of the child.

10 B. In determining whether a joint custody order is
11 in the best interests of the child, in addition to the factors
12 provided in Section 40-4-9 NMSA 1978, the court shall consider
13 the following factors:

14 (1) whether the child has established a close
15 relationship with each parent;

16 (2) whether each parent is capable of
17 providing adequate care for the child throughout each period
18 of responsibility, including arranging for the child's care by
19 others as needed;

20 (3) whether each parent is willing to accept
21 all responsibilities of parenting, including a willingness to
22 accept care of the child at specified times and to relinquish
23 care to the other parent at specified times;

24 (4) whether the child can best maintain and
25 strengthen a relationship with both parents through

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1 predictable, frequent contact and whether the child's
2 development will profit from such involvement and influence
3 from both parents;

4 (5) whether each parent is able to allow the
5 other to provide care without intrusion, that is, to respect
6 the other's parental rights and responsibilities and [~~his or~~
7 ~~her~~] right to privacy;

8 (6) the suitability of a parenting plan for
9 the implementation of joint custody, preferably, although not
10 necessarily, one arrived at through parental agreement;

11 (7) geographic distance between the parents'
12 residences; and

13 (8) willingness or ability of the parents to
14 communicate, cooperate or agree on issues regarding the
15 child's needs.

16 C. In any proceeding in which the custody of a
17 child is at issue, the court shall not prefer one parent as a
18 custodian solely because of gender.

19 D. In any case in which the parents agree to a
20 form of custody, the court should award custody consistent
21 with the agreement unless the court determines that such
22 agreement is not in the best [~~interest~~] interests of the
23 child.

24 E. In making an order of joint custody, the court
25 may specify the circumstances, if any, under which the consent

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1 of both legal custodians is required to be obtained in order
2 to exercise legal control of the child and the consequences of
3 the failure to obtain mutual consent.

4 F. When joint custody is awarded, the court shall
5 approve a parenting plan for the implementation of the
6 prospective custody arrangement prior to the award of joint
7 custody. The parenting plan shall include a division of a
8 child's time and care into periods of responsibility for each
9 parent. It may also include:

10 (1) statements regarding the child's
11 religion, education, child care, recreational activities and
12 medical and dental care;

13 (2) designation of specific decision-making
14 responsibilities;

15 (3) methods of communicating information
16 about the child, transporting the child, exchanging care for
17 the child and maintaining telephone and mail contact between
18 parent and child;

19 (4) procedures for future decision making,
20 including procedures for dispute resolution; and

21 (5) other statements regarding the welfare of
22 the child or designed to clarify and facilitate parenting
23 under joint custody arrangements.

24 In a case where joint custody is not agreed to or
25 necessary aspects of the parenting plan are contested, the

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1 parties shall each submit parenting plans. The court may
2 accept the plan proposed by either party or it may combine or
3 revise these plans as it deems necessary in the child's best
4 ~~[interest]~~ interests. The time of filing of parenting plans
5 shall be set by local rule. A plan adopted by the court shall
6 be entered as an order of the court.

7 G. Where custody is contested, the court shall
8 refer that issue to mediation if feasible. The court may also
9 use auxiliary services such as professional evaluation by
10 application of Rule 706 of the New Mexico rules of evidence or
11 Rule 53 of the Rules of Civil Procedure for the District
12 ~~[court]~~ Courts.

13 H. Notwithstanding any other provisions of law,
14 access to records and information pertaining to a minor child,
15 including ~~[but not limited to]~~ medical, dental and school
16 records, shall not be denied to a parent because that parent
17 is not the child's physical custodial parent or because that
18 parent is not a joint custodial parent.

19 I. Whenever a request for joint custody is granted
20 or denied, the court shall state in its decision its basis for
21 granting or denying the request for joint custody. A
22 statement that joint custody is or is not in the best
23 interests of the child is not sufficient to meet the
24 requirements of this subsection.

25 J. An award of joint custody means that:

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1 (1) each parent's ability to mold and
2 cultivate a relationship with the child shall not be infringed
3 upon unless there is a compelling interest of the child or one
4 of the parents;

5 [(-1)] (2) each willing and able parent shall
6 have liberal, significant and well-defined periods of
7 responsibility for the child pursuant to the following minimum
8 guidelines:

9 (a) for a child less than eighteen
10 months of age, each parent shall have an ample opportunity to
11 bond with the child. The noncustodial parent shall be awarded
12 an occasional overnight visit with the child;

13 (b) for a child eighteen months of age
14 through the child's attendance in kindergarten classes, each
15 parent is entitled to an opportunity to develop and maintain a
16 daily relationship with the child. The noncustodial parent
17 shall be awarded two overnight visitations per week with the
18 child;

19 (c) for a child of preschool age, each
20 parent's right to care for the child shall take precedence
21 over sending the child to daycare or having a third party care
22 for the child;

23 (d) for a child attending school until
24 the child reaches the age of fourteen, each parent shall have
25 a timesharing opportunity that allows each parent to fully

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1 participate in the child's school activities, after-school
2 activities and homework activities;

3 (e) during summer months and school
4 breaks, each parent shall have a liberal period of time with
5 the child. However, the parents may stipulate otherwise; and

6 (f) during major holidays and the
7 child's birthday, each parent shall have a period of time with
8 the child. During minor holidays, the parents shall annually
9 alternate spending those holidays with the child. However,
10 the parents may stipulate otherwise;

11 [~~(2)~~] (3) each parent shall have, and be
12 allowed and expected to carry out, responsibility for the
13 child's financial, physical, emotional and developmental needs
14 during that parent's periods of responsibility;

15 [~~(3)~~] (4) the parents shall consult with each
16 other on major decisions involving the child before
17 implementing those decisions; that is, neither parent shall
18 make a decision or take an action which results in a major
19 change in a child's life until the matter has been discussed
20 with the other parent and the parents agree. If the parents,
21 after discussion, cannot agree and if one parent wishes to
22 effect a major change while the other does not wish the major
23 change to occur, then no change shall occur until the issue
24 has been resolved as provided in this subsection;

25 [~~(4)~~] (5) the following guidelines [~~shall~~]

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1 apply to major changes in a child's life:

2 (a) if either parent plans to change
3 his home city or state of residence, he shall provide to the
4 other parent thirty days' notice in writing stating the date
5 and destination of move;

6 (b) there is a rebuttable presumption
7 that a proposed long-distance relocation of a child that does
8 not accommodate the child's relationship with both parents is
9 not in the child's best interests;

10 [~~(b)~~] (c) the religious denomination
11 and religious activities, or lack thereof, which were being
12 practiced during the marriage should not be changed unless the
13 parties agree or it has been otherwise resolved as provided in
14 this subsection;

15 [~~(c)~~] (d) both parents shall have
16 access to school records, teachers and activities. The type
17 of education, public or private, which was in place during the
18 marriage should continue, whenever possible, and school
19 districts should not be changed unless the parties agree or it
20 has been otherwise resolved as provided in this subsection;

21 [~~(d)~~] (e) both parents shall have
22 access to medical and dental treatment providers and records.
23 Each parent has authority to make emergency medical decisions.
24 Neither parent may contract for major elective medical or
25 dental treatment unless both parents agree or it has been

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1 otherwise resolved as provided in this subsection; and
2 [~~(e)~~] (f) both parents may attend the
3 child's public activities and both parents should know the
4 necessary schedules. Whatever recreational activities the
5 child participated in during the marriage should continue with
6 the child's agreement, regardless of which of the parents has
7 physical custody. Also, neither parent may enroll the child
8 in a new recreational activity unless the parties agree or it
9 has been otherwise resolved as provided in this subsection;
10 and

11 [~~(5)~~] (6) decisions regarding major changes
12 in a child's life may be decided by:

- 13 (a) agreement between the joint
14 custodial parents;
- 15 (b) [~~a requirement~~] requiring that the
16 parents seek family counseling, conciliation or mediation
17 service to assist in resolving their differences;
- 18 (c) agreement by the parents to submit
19 the dispute to binding arbitration;
- 20 (d) allocating ultimate responsibility
21 for a particular major decision area to one legal custodian;
- 22 (e) terminating joint custody and
23 awarding sole custody to one person;
- 24 (f) reference to a master pursuant to
25 Rule 53 of the Rules of Civil Procedure for the District

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1 Courts; or

2 (g) the district court.

3 K. When any person other than a natural or
4 adoptive parent seeks custody of a child, no such person shall
5 be awarded custody absent a showing of unfitness of the
6 natural or adoptive parent.

7 L. As used in this section:

8 (1) "child" means a person under the age of
9 ~~[18]~~ eighteen;

10 (2) "custody" means the authority and
11 responsibility to ~~make major~~ decisions in a child's best
12 ~~[interest]~~ interests in the areas of residence, medical and
13 dental treatment, education or child care, religion and
14 recreation;

15 (3) "joint custody" means an order of the
16 court awarding custody of a child to two parents. Joint
17 custody does not imply an equal division of the child's time
18 between the parents or an equal division of financial
19 responsibility for the child;

20 (4) "parent" means a natural parent, adoptive
21 parent or person who is acting as a parent who has or shares
22 legal custody of a child or who claims a right to have or
23 share legal custody;

24 (5) "parenting plan" means a document
25 submitted for approval of the court setting forth the

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1 responsibilities of each parent individually and the parents
2 jointly in a joint custody arrangement;

3 (6) "period of responsibility" [~~is~~] means a
4 specified period of time during which a parent is responsible
5 for providing for a child's physical, developmental and
6 emotional needs, including the decision making required in
7 daily living. Specified periods of responsibility shall not
8 be changed in an instance or more permanently except by the
9 methods of decision making described under [~~the definition of~~
10 ~~joint custody~~] Subsection J of this section;

11 (7) "sole custody" means an order of the
12 court awarding custody of a child to one parent; and

13 (8) "visitation" [~~is~~] means a period of time
14 available to a noncustodial parent, under a sole custody
15 arrangement, during which a child resides with or is under the
16 care and control of the noncustodial parent. "

17 Section 2. EFFECTIVE DATE. --The effective date of the
18 provisions of this act is July 1, 1998.

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 February 7, 1998
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8 Mr. President:
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10 Your COMMITTEES' COMMITTEE, to whom has been referred
11

12 SENATE BILL 283
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14 has had it under consideration and finds same to be NOT GERMANE.
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17 Respectfully submitted,
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23 Manny M. Aragon, Chairman
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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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